HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, April 22, 2015
84th Legislature, Number 55
The House convenes at 10 a.m.
Part One

Twenty-five bills are on the daily calendar for second-reading consideration today. The bills analyzed in Part One of today's *Daily Floor Report* are listed on the following page.

Alma Allen
Chairman
84(R) - 55

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Wednesday, April 22, 2015
84th Legislature, Number 55
Part 1

SUBJECT: Establishing a Sunset review process for river authorities

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Keffer, Ashby, D. Bonnen, Burns, Kacal, Larson, Lucio, Nevárez, Workman

1 nay — T. King

1 absent — Frank

WITNESSES: For — Bill Peacock, Texas Public Policy Foundation; (*Registered, but did not testify*: Ward Wyatt, Central Texas Water Coalition; Brian Mast, San Antonio River Authority; Ken Kramer, Sierra Club-Lone Star Chapter; Billy Howe, Texas Farm Bureau; Chloe Lieberknecht, The Nature Conservancy)

Against — None

On — Gregory Ellis, Bandera County River Authority and Groundwater District; Phil Wilson, Lower Colorado River Authority; Ken Levine, Sunset Advisory Commission; Dean Robbins, Texas Water Conservation Association; (*Registered, but did not testify*: David Mauk and Sarah Rountree Schlessinger, Bandera County River Authority and Groundwater District)

BACKGROUND: River authorities are "special law" districts governed by a board of directors that are either elected or appointed by the governor. River authorities often encompass entire river basins that reach multiple counties. In general, river authorities have been created to protect and develop the surface water resources of the state, but their duties can vary significantly. They may have responsibility for flood control, soil conservation, and protecting water quality. Some river authorities operate major reservoirs and sell untreated water on a wholesale basis. Some river authorities also generate hydroelectric power, provide retail water and wastewater services, and develop recreational facilities.

Most river authorities do not have the authority to levy a tax, but can issue

revenue bonds based on the projected revenues received from the sale of water or electric power.

River authorities are sometimes referred to as quasi-state agencies or agencies of the state. Because they are governmental entities, they are subject to numerous requirements such as open meetings, open records, and financial audits. The State Auditor's Office has the authority to audit the financial transactions of water districts and river authorities as necessary. In addition, water districts and river authorities are subject to supervision by the Texas Commission on Environmental Quality, including agency rules requiring an independent management audit every five years.

In 2013, the 83rd Legislature enacted HB 2362 by Keffer to allow the Legislative Budget Board (LBB) to periodically review the effectiveness and efficiency of the policies, management, fiscal affairs, and operations of a river authority. The LBB recently completed a management and performance review of the Brazos River Authority. A review of the Lower Colorado River Authority is due next but has not been scheduled.

DIGEST:

CSHB 1290 would establish a limited Sunset review process for river authorities regarding governance, management, operating structure, and compliance with legislative requirements.

Limited Sunset review schedule. The river authorities would be subject to a review as if they were state agencies but could not be abolished. The following authorities would be scheduled for limited Sunset review according to the following schedule, based on the date each would be abolished if it were a state agency:

September 1, 2017 and every 12th year after:

- Angelina and Neches River Authority;
- Central Colorado River Authority; and
- Guadalupe-Blanco River Authority

September 1, 2019 and every 12th year after:

- Lavaca-Navidad River Authority;

- Lower Colorado River Authority (not including the management, generation, or transmission of the authority's wholesale electricity operation);
- Lower Neches Valley Authority; and
- Nueces River Authority

September 1, 2021 and every 12th year after:

- Palo Duro River Authority;
- Red River Authority of Texas;
- Sabine River Authority of Texas;
- Upper Colorado River Authority; and
- Upper Guadalupe River Authority

September 1, 2023 and every 12th year after:

- Bandera County River Authority and Groundwater District;
- Brazos River Authority;
- San Antonio River Authority;
- San Jacinto River Authority;
- Sulphur River Basin Authority; and
- Trinity River Authority of Texas

The bill would repeal a provision in current law that makes the Sulphur River Basin Authority subject to Sunset review every 12 years as if it were a state agency, with an abolition date of September 1, 2017.

River authorities would be required to pay the cost incurred by the Sunset Advisory Commission in performing the review and could not be required to conduct a management audit as required by Texas Commission on Environmental Quality rule until five years after a Sunset review.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1290 would provide direct oversight of river authority operations by establishing a consistent, uniform Sunset review process of an authority's governance, management, operating structure, and compliance

with legislative requirements.

River authorities are entrusted with broad powers and the ability to manage the state's water, yet the Legislature has no direct oversight or review of their actions. Each river authority is created by special law and then turned over to a board of directors for management and operations. A Sunset review would ensure that river authorities were meeting their core functions. This is especially important given the prolonged drought the state is experiencing. Also, a Sunset review would provide an opportunity to examine more efficient ways to manage the authorities and issue bonds.

A river authority could not be abolished as a result of the limited review authorized by HB 1290. These reviews would be for the purposes of open government, accountability, and transparent operations of river authorities. This bill would protect the bonding authority of river authorities by authorizing only limited Sunset review, to guard against concerns that knowledge in the bond market that these entities could be abolished might increase their borrowing costs.

While an audit by the State Auditor's Office could be beneficial, it would be limited to the financial transactions of the authorities and should be used in addition to, rather than in place of, a Sunset review.

OPPONENTS SAY:

CSHB 1290 would be unnecessary and costly because river authorities already have multiple layers of oversight. River authorities currently are subject to review by the Legislative Budget Board and the State Auditor's Office, as well as the continued supervision by the Texas Commission on Environmental Quality. Furthermore, the Legislature already has the ability to place a river authority under Sunset review as deemed necessary.

According to the Sunset Advisory Commission, the estimated cost per review could range from about $65,000 to $80,000, depending on the river authority and travel time of Sunset Advisory Commission staff. The larger river authorities, such as the Lower Colorado River Authority, would incur higher costs. River authorities also may experience additional internal costs. A Sunset review could be a significant financial burden because many of the authorities operate on modest budgets with five or

fewer employees. The authorities with the earlier Sunset dates might be further burdened by not having adequate time to prepare.

While an effort was made to avoid any negative impact to an authority's bond rating by not allowing for an authority to be abolished, a Sunset review still could create uncertainty and negatively affect an authority's bond rating, thereby increasing its borrowing costs. Other options to increase transparency would be less damaging, such as an audit by the State Auditor's Office.

OTHER OPPONENTS SAY:

CSHB 1290 would affect any river authority, whether or not it met criteria to warrant a Sunset review. Some river authorities do not own or manage any surface water rights. It would be more appropriate to put all governor-appointed boards that own, market, and manage the state's surface water under Sunset review, whether those entities were river authorities or water districts.

NOTES:

According to the fiscal note, CSHB 1290 would result in costs to the Sunset Advisory Commission of about $240,000 during fiscal 2016-17 and about $1.2 million over the next five fiscal years. The cost per review is estimated to be about $81,000. All of these costs would be reimbursed by the river authorities.

SUBJECT: Expanding the Freeport heavy-lift corridor

COMMITTEE: Transportation — favorable, without amendment

VOTE: 7 ayes — Pickett, Martinez, Y. Davis, Fletcher, Murr, Paddie, Simmons

0 nays

5 absent — Burkett, Harless, Israel, McClendon, Phillips

WITNESSES: For — Michael Wilson, Port Freeport; (*Registered, but did not testify*: Christina Wisdom, Shintech, Inc.; Michael Garcia, Texas Association of Manufacturers; Daniel Womack, the Dow Chemical Company)

Against — None

On — (*Registered, but did not testify*: John Barton, James Bass, and Bill Hale, TxDOT)

BACKGROUND: HB 1305, enacted by the 82nd Legislature in 2011, established the Freeport heavy-lift corridor, an area of Brazoria County where oversized and overweight vehicles can transport cargo on designated roads from Port Freeport to inland destinations. The routes of this corridor are designated by Transportation Code, sec. 623.219.

To travel on the designated roads, operators of oversized or overweight vehicles must obtain a permit from the port authority. The permit fees primarily are used to maintain and improve these roads, according to sec. 623.214.

DIGEST: HB 1321 would amend Transportation Code, sec. 623.219(b) by expanding the roads on which oversized and overweight vehicles could travel in the Freeport heavy-lift corridor. Oversized and overweight vehicles could use two additional roads in Freeport and four additional roads in Sweeny.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 1321 would accommodate the industrial growth in Brazoria County by providing more routes for oversized and overweight cargo vehicles. New factories and plants are opening in the Port Freeport area, and the Freeport heavy-lift corridor currently is too small to provide for the new and anticipated development. A new international container port opened in 2014, greatly expanding use of the port. In addition, Port Freeport expects significant new investment in the region's manufacturers in the near future, and the corridor should be expanded to help these businesses thrive.

The bill would help reduce the amount of traffic in the heavy-lift corridor because more roads would be designated for overweight cargo vehicles. According to some estimates, the additional routes provided by the bill would reduce traffic in the area by 20 percent. By diverting industrial trucks to specific roads, HB 1321 would improve public safety because regular traffic could avoid these thoroughfares. Moreover, the heavy-lift corridor likely will be marked with signs. This will improve traffic safety by indicating to overweight vehicle operators the proper routes for their cargo and to the general public that overweight vehicles will be traveling in the area.

Operators of overweight and oversized vehicles pay an additional fee to drive in the heavy-lift corridor. The fee is $30, and $26 of the fee goes to highway maintenance. This money offsets any damage that the vehicles may cause to the roads. Furthermore, when the roads in the heavy-lift corridor are upgraded, they will be designed for these overweight trucks. These designs should minimize the amount of road damage these trucks cause.

HB 1321 is only meant to accommodate additional overweight vehicles by expanding the corridor. The maximum weight still would be 125,000 pounds, and it is not expected that oversized or extremely heavy vehicles would use the heavy-lift corridor.

Expanding the heavy-lift corridor would help lower emissions and particulates because many of the cargo vehicles using the corridor otherwise would travel to the Port of Houston to serve the manufacturers in Freeport. HB 1321 would encourage this traffic to stay in the local area

by providing additional routes in the corridor, saving costs for shippers and manufacturers, as well as reducing the environmental impact.

Expanding the heavy-lift corridor by 34 miles would help emergency personnel and haz-mat teams anticipate where events like spills and leaks could occur. These events can be difficult to avoid, and HB 1321 would make it easier to predict where hazards may surface by keeping certain overweight vehicles confined to particular roads.

OPPONENTS SAY:

HB 1321 could have significant health and safety impacts to the Freeport area. Expanding the range and volume of overweight vehicles could expand the potential for harm to residents and the ecosystem of the surrounding area. The existing additional fee for operating oversized and overweight vehicles does not offset the environmental and safety costs associated with activity in the heavy-lift corridor, and this bill would exacerbate these concerns.

While the existing fee does help to defray the costs of road maintenance caused by overweight trucks traveling on roads that are not designed to carry them, these degraded roads still present a safety hazard for the driving public. In addition, increasing the volume of overweight trucks on roads in the Freeport area also could lead to a spike in dangerous interactions with other road users. Increased oil and gas extraction activities in the Eagle Ford area have indicated a connection between a high volume of heavy industrial trucks and an increase in vehicle crashes.

The current fee that supports highway maintenance does nothing to address environmental concerns, including a higher concentration of vehicle emissions that could accompany the presence of more overweight trucks. HB 1321 also could increase the risk of chemical spills and leaks associated with trucks in the corridor carrying harmful chemicals or products in open-top containers.

SUBJECT: Requiring certain political subdivisions to use county election precincts

COMMITTEE: Elections — committee substitute recommended

VOTE: 5 ayes — Laubenberg, Fallon, Israel, Phelan, Schofield

0 nays

2 absent — Goldman, Reynolds

WITNESSES: For — Ed Johnson, Harris County Clerk's Office; Alan Vera, Harris County Republican Party; Colleen Vera; (*Registered, but did not testify*: Glen Maxey, Texas Democratic Party; Gaudette; Kelly Horsley)

Against — Melissa Brunner, City of Flatonia, Texas Municipal Clerks Association; Bill Longley, Texas Municipal League; (*Registered, but did not testify*: Jon Weist, City of Irving; John Carlton, Texas State Association of Fire and Emergency Districts)

On — Ruben Longoria, Texas Association of School Boards; (*Registered, but did not testify*: Ashley Fischer, Secretary of State; Keith Ingram, Secretary of State, Elections Division; Bill Fairbrother, TRCCA)

BACKGROUND: Election Code, sec. 41.001 sets the following as uniform election dates:

- the second Saturday in May in an odd-numbered year;
- the second Saturday in May in an even-numbered year, for an election held by a political subdivision other than a county; or
- the first Tuesday after the first Monday in November.

DIGEST: CSHB 2027 would require that all elections on uniform election dates in both May and November use the regular county precincts as election precincts and the regular county polling places as election polling places.

The bill would create an exception for elections held on the May uniform election date by a political subdivision that conducted early voting by personal appearance at each permanent or temporary branch polling place

on the same days and during the same hours that voting was conducted at the main early voting polling place.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 2027 would give voters predictability and uniformity in their polling locations. It also would prevent attempts to sway the outcome of an election by moving polling locations to targeted locations at targeted times during an ongoing election.

During the May uniform elections, voters often are required to vote in one place for countywide races and in another for other political subdivisions, such as cities, school boards, and special districts. This creates confusion and places an unnecessary burden on voters. This bill would streamline the voting process by requiring cities, school boards, and other political subdivisions to use the same election precincts and polling locations that counties use.

The bill also would prevent "rolling voting," the practice by which local districts or municipalities avoid the consistency of uniform election regulations by moving voting machines during an ongoing election. This practice has been used to set up voting locations for a limited amount of time to capture a targeted voting bloc. By requiring that political subdivisions either use the county polling places or maintain branch polling places on the same days and during the same hours as the subdivision's main early voting location, this bill would limit officials' ability to influence elections based on where and how long they set up temporary branch polling places.

OPPONENTS SAY:

CSHB 2027 could inhibit the flexibility of political subdivisions to ensure that every voter had a chance to vote. Political subdivisions often use temporary branch polling places to reach populations that otherwise would have a difficult time voting. For example, they could set up a polling place in a nursing home for a few days during early voting so that those voters could vote in person rather than by mail. Under the bill, the political subdivisions would be required either to keep that temporary polling place open during the entire early voting period, which would be prohibitively expensive, or to shut down that temporary polling place and

fail to reach that population.

This bill also would make it difficult for political subdivisions to find proper locations for their branch polling places. Political subdivisions often vary the hours of their polling places not because of intent to sway elections but because of the limitations of the buildings that serve as polling places. For example, a political subdivision could use a civic center as a polling place, but it might be required to limit the polling place hours on one day due to a conflicting event at the center.

The intent of CSHB 2027 is to limit officials' ability to sway election results, but it would limit a range of activities necessary to facilitate the voting process and ensure that all citizens could exercise their right to vote.

SUBJECT: Abolishing the Texas B-On-time student loan program

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 7 ayes — Zerwas, Howard, Alonzo, Crownover, Martinez, Raney, C. Turner

1 nay — Morrison

1 absent — Clardy

WITNESSES: For — None

Against — Garrett Groves, Center for Public Policy Priorities; (*Registered, but did not testify*: George Torres)

On — Joseph Pettibon, Texas A&M University; John Rudley, Texas Southern University; Lisa Blazer, University of Texas at San Antonio; (*Registered, but did not testify*: Ken Martin, Texas Higher Education Coordinating Board)

BACKGROUND: The Texas-B-On-time Loan program, as outlined in Education Code, Title 3, subch. Q, is a no-interest college loan program administered by the Texas Higher Education Coordinating Board. B-On-time loans are forgiven if a student graduates within four or five years, depending on the program, and maintains a 3.0 GPA.

To be eligible to receive a B-On-time loan, students must meet certain qualifications. For example, they must be eligible for financial aid, but no specific financial need beyond that is required. Loans may be provided to resident baccalaureate students at public or private institutions in Texas. Students may renew B-On-time loans in subsequent semesters or terms as long as they fulfill certain performance measures and other eligibility requirements.

According to Education Code, sec. 56.011, public higher education institutions must set aside at least 20 percent of all tuition collected for

resident undergraduates that is more than $46 per semester credit hour to be used for student financial assistance. Education Code, sec. 56.465 further stipulates that 5 percent of the tuition charged to a resident undergraduate student in excess of $46 per semester credit hour be deposited into the B-On-time student loan account. This 5 percent is considered part of the 20 percent required to be set aside under sec. 56.011.

DIGEST:

CSHB 700 would abolish the Texas B-On-time loan program, phasing out the program over the next five years. The bill also would make changes to the tuition set-aside that institutions are required to collect under Education Code, secs. 56.011 and 56.465.

CSHB 700 would direct the Texas Higher Education Coordinating Board to cease making new B-On-time loan awards beginning the fall semester of 2015. The bill would allow renewal of awards received before September 1, 2015, for eligible students until a term before the fall semester of 2020, as long as those students continued to meet eligibility requirements. On September 1, 2020, the Texas B-On-time account from which the loans are made would be abolished.

Following the termination of the B-On-time loan program, any balance left in the Texas B-On-time account would be redistributed to eligible institutions by the coordinating board. The bill would require the coordinating board to develop a formula to fairly allocate these remaining funds to institutions at which the B-On-time program was underutilized. The loan program would be considered underutilized if the institution's percentage of the total tuition set-aside for the program across all institutions was greater than the percentage of students at that institution who received a B-On-time loan for the same period.

CSHB 700 would also abolish the 5 percent tuition set-aside required of institutions for the B-On-time loan program. The percentage each institution would be required to pay as a tuition set-aside would decrease from at least 20 percent of all tuition over $46 per semester credit hour to at least 15 percent over that amount. These tuition set-aside changes would take effect the fall semester of 2015.

CSHB 700 would make several technical and conforming changes to the Education Code related to the abolishment of the B-On-time program.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 700 would abolish a financial aid program that has been underutilized, inequitable, and ineffective.

Since the program's inception, millions of dollars in general revenue and tuition set-asides for the B-On-time program have sat unused in a general revenue account. The Sunset Advisory Commission's review of the Texas Higher Education Coordinating Board for the 83rd Legislature revealed that few schools that contributed set-aside funds to the B-On-time program recaptured much or any of the money paid into the account.

Many schools end up paying more into the program in tuition set-asides than the schools can use to help their students. This especially has been true for schools serving larger populations of students who might struggle to graduate with a B average in four years, as required by the program. Such circumstances result in an unfair taking of resources from these schools that is being redistributed to institutions with students who are more likely to take advantage of and succeed in the program.

The tuition set-asides collected for B-On-time and other financial aid programs amount to a tax on certain middle-class families. Those who do not qualify for aid end up paying higher tuition so that schools can redistribute this money to other families. CSHB 700 would abolish this unfair practice by eliminating the 5 percent set-aside for the B-On-time program and reducing the overall tuition set-aside requirement to 15 percent. Although funds that schools could keep by removing the 5 percent set-aside would not have to be used for financial aid purposes, schools are empowered to determine the best use of that money at their specific institution. If an institution favored the B-On-time program, these funds could be used to create a local version of the fund.

CSHB 700 also would ensure that schools that had been paying into the B-On-time program without receiving much benefit would receive a fair allocation of leftover funds when the account was closed in 2020. These

allocations would allow these institutions to use the funds, in addition to the money that otherwise would have been paid into B-On-time, for tailored, institution-specific interventions or incentives to accomplish the original goals of the B-On-time program at their own campuses. The allocation in 2020 to institutions that underutilized the program funding would not simply reward these schools for failing to commit to the success of the program. Rather, it would reflect the reality that the program has not served certain institutions' students well and that the burden of promoting the program outweighed the utility of students knowing about it.

Abolishing the B-On-time program under CSHB 700 would allow the Legislature to focus on programs that serve more students more effectively, such as the TEXAS Grant program, which benefits a larger and higher-need student population.

B-On-time requirements can be difficult for students to understand and meet. Many students change majors, are commuters, take time off, or work part-time while in school and may not complete their degrees under the time and GPA constraints required to have their loans forgiven. Students who do take advantage of the program have not succeeded at the rate desired, and when students do not succeed, these loans have a higher default rate than other loans. Those students who do complete the program risk being stuck paying substantial taxes for the forgiven debt right as they leave school to pursue a career.

Due to federal regulations, schools must follow several burdensome requirements to be able to advertise or promote B-On-time loans. Therefore, many students do not know about the program because it is not promoted. Efforts to change these federal regulations are unlikely to happen anytime soon, while the state grapples with rising tuition costs and an increased need for college graduates. The program also is not well known because funding over the years has been inconsistent, and many students and schools do not pursue it because they have heard that the program may not be continued. This has resulted in a dwindling number of students being served by B-On-time. While some statistics reflect that students in B-On-time have better graduation rates than students receiving other types of financial aid, the number of students in B-On-time relative

to other aid programs is so small that any comparison is unreliable and insignificant.

CSHB 700 would help increase budget transparency, which is a priority for the Legislature this session. Other legislation introduced this session could enable institutions to spend down the funds for the B-On-time account for purposes other than the program. With so many students in need of financial aid, these funds should not be used to certify the budget. Renewal funding to institutions over the next five years would not necessarily be proportionate to what each institution paid into the loan account, but CSHB 700 would demonstrate a commitment by the state to those students currently receiving the loans to see them through the rest of their baccalaureate programs.

The bill would provide a good strategy for abolishing the B-On-time program, phasing out the loans so that students currently receiving the funds would not be left without the aid on which they have come to rely.

OPPONENTS SAY:

CSHB 700 would eliminate a financial aid program that has never been given a real chance to succeed. The concerns about the program could be remedied easily and are not an indication of whether the concept itself is good. The coordinating board could be empowered by the Legislature to redistribute funds differently, or the program could serve a more targeted population. Efforts are underway at the federal level to change restrictions on promoting loan programs like B-On-time.

The B-On-time program has received inconsistent funding over its short existence, hindering its ability to serve large numbers of students and making its future uncertain for many would-be recipients. The outcomes the program has seen, even without reaching full potential, have been positive. An encouraging percentage of students complete the program successfully. These students also boast higher and more timely graduation rates than those in other financial aid programs. Further, these loans are issued by the state interest-free, so even when students do not complete the program, they receive a great benefit. Rather than abolishing the B-On-time program, the Legislature could commit to funding the program for 10 years, which would give the program a better chance to establish itself, gain popularity, and yield useful data about its efficacy.

CSHB 700 would remove an innovative financial aid program at a time when financial aid has not kept pace with the cost of a college education, Texas has low college graduation rates, and students often take longer to graduate than expected. Texas has an urgent need for college-educated workers. B-On-time is vital for middle-income families, who do not qualify for most need-based aid programs, to access higher education. Abolishing this program would remove an effective tool to combat these issues. While there is hope behind CSHB 700 that institutions would take the funds previously set aside for B-On-time and reinvest them in their own efforts to improve graduation rates and student success, nothing in the bill would require this.

The B-On-time program is one of the only programs in the country to incentivize timely graduation, and it has become a national model. The program is fiscally strategic, requiring students to perform and achieve specific outcomes to receive state funds interest free. Many other state financial aid programs invest money in students only to see them take longer to finish their degrees and accrue more state aid or not finish at all. Rather than eliminating the B-On-time program, the state should use it as a model for all other forms of state financial aid.

OTHER OPPONENTS SAY:

The redistribution of B-On-time funds left in the general revenue account as outlined in CSHB 700 would not be effective or equitable. The bill should address specifically how the distribution for renewals should be made. SB 215 by Birdwell, enacted by the 83rd Legislature, allows public universities to receive B-On-time funding proportionate to the amount of tuition set-asides collected. CSHB 700 would not specify whether the funding for loan renewals during the remaining years of the program would be proportionate to the amount of tuition set-asides collected.

Moreover, the bill's wind up method for the account would use a definition for "underutilized" that unfairly could impact some institutions. While an institution might have had a relatively high number of B-On-time loan recipients compared to other institutions, it still could be allocated only a small percentage of funding compared to what it contributed in tuition set-asides for the program. This allocation method would seem to reward institutions who had not worked hard the past

decade to promote and improve the B-On-time program, allocating more of the funds to schools that have had few B-On-time recipients.

SUBJECT: Revises rules affecting some property sales, public notices and payments

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 4 ayes — Deshotel, E. Thompson, Cyrier, Lucio

0 nays

3 absent — Bell, Krause, Sanford

WITNESSES: For — None

Against — Donnis Baggett, Texas Press Association; (*Registered, but did not testify*: Kelley Shannon, Freedom of Information Foundation of Texas)

On — Mark Havens, General Land Office

BACKGROUND: Natural Resources Code, ch. 31 contains requirements related to the sale of real property by the state and addresses cases in which the governor's signature is required.

Natural Resources Code, ch. 33 requires that the commissioner of the General Land Office (GLO) provide notice of an approved coastal boundary survey in the Texas Register and for two consecutive weeks in a general circulation newspaper in the county or counties where the land depicted in the survey is located.

Natural Resources Code, ch. 51 enables the land commissioner to remove and dispose of a facility or structure on land owned by the state under certain circumstances. Notice of the intent to remove or dispose of the facility or structure must be posted on the facility or structure and published in a general circulation newspaper in the county in which the facility or structure is located two times within 10 consecutive days.

Natural Resources Code, ch. 52 requires a lessee who intends to file a suit in protest of audit deficiency assessments to submit payment for the amounts assessed with the lessee's written protest.

DIGEST:

HB 2104 would make certain changes to the Natural Resources Code that pertain to the General Land Office (GLO).

Requirement for governor's signature. The bill would require the governor's signature to approve the sale of properties that did not receive an acceptable bid at auction and would therefore be sold through an alternative process, rather than requiring it in cases when "the governor's approval is required."

Notice requirements. Notices on approved coastal boundary surveys would have to be published on the GLO's website for two consecutive weeks within 30 days after the date of approval. A notice required under sec. 51.3021 regarding the state's intent to remove a structure or facility located on the state's land, if personal service could not be obtained or the responsible person's address was unknown, would have to be posted on the GLO's website and in the Texas Register. The bill would remove requirements that the notices be posted in general circulation newspapers in the relevant county or counties.

Removal of audit deficiency payment requirement. The bill would remove a provision that currently requires individuals who have been assessed to owe additional royalties resulting from an audit to pay the assessed amounts before filing a suit to protest the audit findings. It also would remove provisions addressing suits to recover these payments.

Payment deposit authority. The bill would require the comptroller, at the land commissioner's direction, to deposit certain payments collected by the GLO on behalf of other state agencies to the probable fund to which the payments belonged until the commissioner and the comptroller's office had determined where the funds properly should be directed.

Other changes. The bill would make other minor changes to the Natural Resources Code. It would reflect that descriptive information found in the School Land Registry also can be found elsewhere. It would clarify when the local development policies and procedures would govern requested revisions to a development plan. It would repeal language stating that the land commissioner will periodically furnish a list of land areas potentially subject to sale or lease by the School Land Board.

This bill would take effect September 1, 2015, and would apply only to an audit billing notice or a final commissioner's order received by a lessee on or after that date.

SUPPORTERS SAY:

HB 2104 would update provisions in the Natural Resources Code necessary to reflect current practices related to the General Land Office (GLO).

Requirement for governor's signature. Existing law indicates that the governor's signature may be required in transactions involving sales that do not proceed through auction. This bill would clarify and make explicit that the governor's signature is required in such cases.

Notice requirements. Requiring notice on approved coastal boundary surveys to appear online rather than in a newspaper would be cost-effective and would reflect the way an increasing number of people receive information today. Newspaper notices can be expensive and historically have not provided value in terms of responses from the public on certain issues. For instance, the GLO reported that it received no responses when posting newspaper notices regarding derelict vessels on state land. The section of the newspaper where such notices are posted — the legal notices — normally is read by those looking for them. Those stakeholders likely would find an online resource for this information equally or more convenient.

Removal of audit deficiency payment requirement. The bill would update statute to match the current practice of the GLO, which does not collect amounts assessed during an audit if the audited party is filing a suit to protest the findings. Collecting these amounts prior to final disposition of the case would be inefficient and possibly even unconstitutional.

Payment deposit authority. By restoring a previous GLO practice, the bill would enhance efficiency in accounting processes for the agency. Based on experience, the GLO typically knows which agencies will be credited with the majority of funds collected. It would make sense to use this experience to place the funds in accounts where they can accrue interest rather than putting them in a separate suspense account while the

transactions are being verified and finalized.

OPPONENTS SAY:

HB 2104's removal of the requirement to post certain notices in local newspapers could leave the public less well informed. Many people may not know to check the GLO's website for this information. These notices serve the public interest, and every reasonable effort should be made to ensure that people are able to view them. Research indicates that many Texans do not have ready access to the Internet or a computer to research matters of public interest. The trend away from non-Internet forms of public notification erodes the public's ability to be informed.

SUBJECT: Requiring testing of certain defendants for communicable diseases

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Murphy, J. White, Allen, Keough, Krause, Schubert, Tinderholt

0 nays

WITNESSES: For — Lynn Holt; (*Registered, but did not testify*: David Fugitt, Austin Police Department; Seth Mitchell, Bexar County Commissioners Court; Jim Allison, County Judges and Commissioners Association of Texas; Craig Pardue, Dallas County; Susan Redford, Ector County, Texas; Bobby Gutierrez and Kirsha Haverlah, Justices of the Peace and Constables Association of Texas; Mark Mendez, Tarrant County Commissioners Court; Rick Thompson, Texas Association of Counties; Donald Lee, Texas Conference of Urban Counties; Melinda Smith, the Combined Law Enforcement Associations of Texas; Conrad John, Travis County Commissioners Court)

Against — None

On — (*Registered, but did not testify*: Jill Mata, Texas Juvenile Justice Department)

BACKGROUND: Code of Criminal Procedure, art. 18.22 requires testing for communicable disease of anyone who was arrested for a felony or misdemeanor and who, during the offense or arrest, causes a peace officer to come in contact with the person's bodily fluids.

DIGEST: CSHB 1595 would expand the circumstances surrounding an offense or an arrest for an offense that could result in mandatory testing for communicable diseases. Testing would be required if a person caused bodily fluids to come in contact with a magistrate or correctional facility employee during a judicial proceeding, an initial period of confinement following an arrest, or confinement after a conviction or adjudication resulting from the arrest.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015, and would apply to motions by a court or requests by those involved made on or after that date.

SUPPORTERS SAY:

CSHB 1595 would be a logical extension of current law that mandates testing of those involved in the criminal justice system who expose peace officers to bodily fluids that may carry communicable diseases. The bill would give magistrates and correctional facility employees the same right as peace officers to know whether they had been exposed to a communicable disease in the course of doing their jobs.

Problems have arisen when magistrates or jailers were exposed to others' bodily fluids but there was no requirement to have the defendant tested. For example, a jailer came into contact with blood and other fluids while taking a person's fingerprints. Because the jailer was not a peace officer, the court had no authority to order testing automatically. Magistrates can encounter similar situations as they sit just a few feet from arrestees in courtrooms. While testing eventually might be ordered in such cases, it can be a time-consuming process involving a court when time might be of the essence.

CSHB 1595 would address this problem by allowing testing to be ordered in connection with an expanded group of criminal justice officials who are in close contact with arrestees. The bill would give magistrates and correctional facility employees the same protection as peace officers. These personnel put themselves at risk to protect society and should have the basic protection of knowing whether they had been exposed to communicable diseases.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Classifying massage therapy programs as postsecondary education

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 6 ayes — Button, C. Anderson, Faircloth, Metcalf, Villalba, Vo

0 nays

3 absent — Johnson, Isaac, E. Rodriguez

WITNESSES: For — Russell Rust, American Massage Therapy Association; CG Funk, Massage Envy Franchising; Jarrett Erasmous, Steiner Education Group, Texas Center for Massage Therapy; Chris Hughes, Texas Center for Massage Therapy; (*Registered, but did not testify*: Jerry Valdez, American Association of Cosmetology Schools, Career Colleges and Schools of Texas; Les Sweeney, Associated Bodywork and Massage Professionals; David Burlington and Hang Hua, Massage Heights)

Against — Sharon Jahn; (*Registered, but did not testify*: Raul Flores, Academy for Massage and Texas Massage Academy)

On — Mark Dauenhauer; David Lauterstein; (*Registered, but did not testify*: Alex Matthews, Austin Community College; Yvonne Feinleib, Department of State Health Services; John Conway)

BACKGROUND: Occupations Code, ch. 455 regulates massage therapy in Texas, including massage schools.

DIGEST: CSHB 1049 would amend Occupations Code, sec. 455.203 to designate the course of instruction in massage therapy provided by a licensed massage school as a postsecondary education program. Massage schools that provide instruction to people who are beyond the age of compulsory education could operate postsecondary-level educational programs.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1049 would improve options for students and support a growing industry in Texas by explicitly designating massage therapy programs as postsecondary education. Designating instruction in massage therapy as a postsecondary program would make it easier for students in Texas who otherwise might not be able to afford massage school to access federal grants and loans. Massage therapy is a large industry in the state and likely will continue to grow rapidly. In addition to licensed massage therapists, administrative staff and other professionals support the industry in spas, hotels, cruise ships, sports clinics, and other venues. Massage currently is considered a leisure activity in Texas, but other states are beginning to treat it as preventive health care as well. As demand increases, spas and clinics need access to qualified therapists.

OPPONENTS SAY:

CSHB 1049 would benefit large for-profit massage schools more than smaller institutes, which could get pushed out of the market. As the popularity of massage therapy increases, large for-profit institutions have begun purchasing massage schools and creating programs with questionable success rates. To compete with one another, massage schools might spend more on amenities and other features to attract students, inadvertently increasing the cost of their programs. Loans would provide students with an avenue to pay for their education while accruing thousands of dollars of student debt with no guarantee of employment.

NOTES:

The companion bill, SB 1556 by Rodríguez, was referred to the Senate Health and Human Services Committee on March 23.

SUBJECT: Exempting incarcerated persons from a child support income presumption

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 6 ayes — Dutton, Riddle, Hughes, Peña, Sanford, J. White

0 nays

1 absent — Rose

WITNESSES: For — Douglas Smith, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Traci Berry, Goodwill Central Texas; Ingrid Montgomery, Intended Parents' Rights; Lori Henning, Texas Association of Goodwills; Amanda Marzullo, Texas Defender Service; Emily Gerrick, Texas Fair Defense Project; Yannis Banks, Texas NAACP)

Against — Cecilia Wood

On — Joel Rogers and Charles Smith, Office of the Attorney General - Child Support Division; (*Registered, but did not testify*: Karl Hays, Texas Family Law Foundation)

BACKGROUND: When determining an individual's child support liability, courts rely in part on Family Code, sec. 154.062, which defines what may be counted as a party's "resources" for paying support. If a court does not receive any evidence of a person's resources as defined by this section, the court is required under sec. 154.068 to apply a presumption that the person earns income equal to the federal minimum wage for a 40-hour work week.

DIGEST: HB 943 would prevent courts from applying the full-time minimum wage income presumption in a child support determination where there was no evidence of a person's resources if the person was incarcerated for more than 90 days in jail or prison at the time the court determined the person's income.

HB 943 would take effect September 1, 2015, and would apply only to

proceedings to establish or modify child support orders that were filed or pending in a trial court on or after that date.

SUPPORTERS SAY:

HB 943 would address an injustice endured by many incarcerated individuals in Texas, many of whom have at least one child. While courts are not supposed to apply the full-time minimum wage presumption unless there is no evidence of a person's resources, many judges treat incarceration the same as intentional unemployment and apply the presumption without accounting for the inability of prisoners to appear in hearings or submit evidence. HB 943 would clarify the law to ensure that individuals in prison could still exercise their due process rights and would not by default be ordered to pay the full-time minimum wage support rate without their net income and resources being considered.

The bill would help resolve an unfortunate effect of the full-time minimum wage presumption. Many prisoners leave periods of confinement with a great deal of child support debt, making it difficult to get back on their feet. This can cause parents and other obligors to disappear, hurting children and custodial family members and eliminating the ability to receive future child support. HB 943 would allow parents to reintegrate into society and resume child support obligations. People reentering society after incarceration face many barriers, including housing and employment difficulties. HB 943 would remove one of these barriers to help individuals rebuild their lives. In addition, not everyone who has been sent to prison is guilty, as evidenced by multiple overturned convictions, and policies further punishing these individuals are unjust.

Exempting individuals from the full-time minimum wage presumption would not further any policies unjustly benefitting those who had broken the law. No one goes to prison to avoid child support payments, and many of the Family Code statutes controlling payment presumptions and considering ability to pay are in statute to protect custodial parents against another individual's willful refusal to get a job or otherwise support the individual's children.

OPPONENTS SAY:

HB 943 would protect the interests of individuals who have broken the law at the expense of others who become solely responsible for supporting the individuals' children. Although making child support payments while

in prison may be difficult or impossible, someone is still responsible for caring for an incarcerated parent's children during that time, and it should not be the child's custodian who has obeyed the law or taxpayers. Some individuals may be incarcerated for abusing or harming their children or family, and HB 943 would help exempt them from paying support while serving time for that offense.

In certain instances, a parent who went to prison after previously sharing equal custody might leave the other parent with full custody, raising overall costs and hindering the non-incarcerated parent's ability to hold a job and earn income. HB 943 would not require the imprisoned individual to contribute any support for this time.

HB 943 also could conflict with Family Code, sec. 154.066, which allows judges to set child support obligations based on potential to earn rather than current income for a person who is intentionally unemployed or underemployed. When a person breaks the law, the court should be able to base support payments on what they could earn upon leaving prison.

While there have been cases of wrongful imprisonment, lawmakers need to assume for policy purposes that those sent to prison are guilty and legislate accordingly to protect the custodians of children who receive no financial support.

OTHER OPPONENTS SAY:

Before granting an exemption to the full-time minimum wage presumption, HB 943 should require courts to find that an individual is incarcerated. As it stands, the bill is not clear on this point.

NOTES:

The author intends to offer a floor amendment to HB 943 that would require courts to make a finding that an individual was incarcerated for 90 days or more before exempting that person from the full-time minimum wage presumption.

SUBJECT: Providing for the transfer of liability of recycled drill cuttings

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 9 ayes — Darby, Paddie, Anchia, Herrero, Keffer, P. King, Landgraf, Meyer, Wu

1 nay — Craddick

3 absent — Canales, Dale, Riddle

WITNESSES: For — Tom Jones; (*Registered, but did not testify*: Matthew Thompson, Apache Corporation; Christie Goodman, Chevron; Stan Casey, Concho Resources Inc.; Teddy Carter, Devon Energy; Marty Allday, Enbridge Energy; David Holt, Permian Basin Petroleum Association; Mary Tipps, Texans for Lawsuit Reform; Bill Stevens, Texas Alliance of Energy Producers; Ed Longanecker, Texas Independent Producers And Royalty Owners Association; Mari Ruckel, Texas Oil and Gas Association; James Mann, Texas Pipeline Association; Jackie Mason, Texas Propane Gas Association; Gloria Leal, Waste Facilities, Inc.; Luke Bross; Chris Hosek; Greg Macksood)

Against — None

On — Sally Velasquez, Frio County Commissioners Court; Cyrus Reed, Lone Star Sierra Club; Leslie Savage, Railroad Commission of Texas

DIGEST: CSHB 1331 would provide for the transfer of liability when certain byproducts of oil and gas drilling were recycled by a recycler permitted by the Railroad Commission.

The bill would define "drill cuttings" to mean "bits of rock or soil cut from a subsurface formation by a drill bit during the process of drilling an oil or gas well and lifted to the surface by means of circulation of drilling mud."

The bill would provide that a generator of drill cuttings who transferred

the cuttings to a permitted recycler was not liable in tort for a consequence of the beneficial use of the recycled product, if the drill cuttings were transferred with the contractual understanding that the drill cuttings would be put to a beneficial use. The recycler would be required to provide a copy of a permit from the Railroad Commission to the generator.

CSHB 1331 would specify that when drill cuttings were transferred by a generator of drill cuttings to a permitted recycler, the material would be considered the property of the recycler until the recycler transferred it to another person for disposal or use.

Similarly, the bill would specify that when recycled drill cuttings were transferred to another person for beneficial use or for disposal, the treated products or byproducts of recycling would be considered the property of the person to whom the material was transferred, unless otherwise provided by a legal document.

This bill would require the Railroad Commission to adopt rules governing the treatment and beneficial use of drill cuttings. It also would change the heading of Natural Resources Code, ch. 122 to specify that the chapter applied to fluid waste from oil and gas production.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1331 would increase the recycling of drill cuttings, turning a waste product into a useful resource.

Current law could allow litigation against a generator of drill cuttings even for effects occurring after the cuttings were recycled and used for some beneficial purpose. This places significant liability on the generator, creating an incentive to dispose of drill cuttings in landfills without recycling them. This bill would ensure that the chain of liability followed the chain of custody, eliminating this liability and making generators more likely to recycle drill cuttings.

Recycling drill cuttings has a variety of positive effects. Without recycling, drill cuttings would go to landfills or landfarms where contaminated soil is worked into the ground, which can cause significant

environmental degradation. By contrast, recycling this waste produces a variety of useful materials, including road base, diesel fuel, and water. This would represent the expansion of a valuable industry, increasing job growth and economic activity.

This bill would parallel current law on recycling fluid waste products from oil and gas drilling, which has been successful in increasing recycling and conserving water.

OPPONENTS SAY:

CSHB 1331 would not require a written contract to transfer liability — only a "contractual understanding." It should be amended to require a written contract in order for the liability to be transferred.

SUBJECT: Interfering with peace officer by distributing officers private information

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Herrero, Moody, Canales, Hunter, Shaheen, Simpson

0 nays

1 absent — Leach

WITNESSES: For — Latesha Watson, Arlington Police Department; (*Registered, but did not testify*: Andres Pina, Arlington Police Department; Donald Baker, Austin Police Department; Steve Dye, Grand Prairie Police Department; Jessica Anderson, Houston Police Department; Shanna Igo, Texas Municipal League; Gary Tittle, Texas Police Chiefs Association; Lon Craft and Heath Wester, Texas Municipal Police Association)

Against — (*Registered, but did not testify*: Thomas Ratliff, Harris County Criminal Lawyers Association)

BACKGROUND: Penal Code, sec. 38.15 makes interference with public duties a criminal offense. Under sec. 38.15(a)(1) it is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) to interrupt, disrupt, impede, or otherwise interfere with a peace officer while the officer is performing a duty or exercising lawful authority.

DIGEST: CSHB 1061 would create a rebuttable presumption, under the offense of interfering with public duties, that a person interfered with a peace officer if during the trial it was shown that the person intentionally disseminated the officer's personal, private, or confidential information.

The bill would be effective September 1, 2015, and would apply to offenses committed on or after that date.

SUPPORTERS SAY: CSHB 1061 would update the state's law on interfering with the public duties of peace officers to reflect an emerging threat to those officers. While current law makes it a crime to interfere with the duties of a peace

officer, an increasing activity called “doxing” can negatively affect investigations and the personal security of officers but is not covered explicitly under the offense laws.

Doxing can involve using the Internet to research and publish personal information such as phone numbers, addresses, Social Security numbers, passwords, and financial information. One case in 2011 reportedly resulted in the online publication of peace officers’ private information. Publishing this type of information as it relates to peace officers can interfere with criminal investigations and result in threats to or the harassment of officers or their families and possible retaliation by criminals or others. While certain information relating to peace officers can be kept confidential under the state’s public information laws, not all information is covered, and those laws might not apply to some activities involved in disseminating information in doxing cases.

The bill would address this issue by establishing a rebuttable presumption that could be used as part of a prosecution of the crime of interference with public duties. If a person intentionally disseminated peace officers’ private information as a part of committing the offense, there would be a rebuttable presumption that a person interfered with a peace officer. Establishing this presumption would help appropriate cases move forward because it would be clear to courts that certain evidence was relevant to a case and admissible in a trial.

The bill would help protect peace officers from interference in conducting their duties without infringing on free speech or non-criminal activities. While the bill would create a presumption, many other factors would have to be present for a case to be prosecuted or to result in a conviction. The bill would not change the essence of the current offense, which still would require interference with peace officers performing their duties or exercising their lawful authority. The presumption that would be established by the bill would be rebuttable by defendants. The offense itself would have to be committed with criminal negligence, and the dissemination of information would have to be done intentionally. The information also would have to be personal, private, or confidential. As with any criminal case, the offense of interference with public duties would have to be proved beyond a reasonable doubt, and prosecutors

would use their discretion only to prosecute appropriate cases.

OPPONENTS SAY:

CSHB 1061 would create too broad a presumption that could facilitate prosecutions for activities that may consist of protected speech. If information is gleaned and disseminated through lawful means, it should not be presumed to be interfering with a peace officer as a component of a criminal offense.

It would be better to approach the issue of doxing by focusing on any crimes committed in the gathering or use of the information. For example, it is a crime to obtain information illegally through theft, hacking, or other means. Identify theft is also a crime, and making threats or harassing peace officers or their families would fall under current offenses.

SUBJECT: Allowing TFC to transfer DPS property to local law enforcement agencies

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — Phillips, Nevárez, Burns, Dale, Johnson, Metcalf, Moody, M. White, Wray

0 nays

WITNESSES: For — (*Registered, but did not testify*: Keith Oakley, Associated Security Services and Investigators of the State of Texas (ASSIST); Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Kevin Lawrence and Lon Craft, Texas Municipal Police Association (TMPA); Monty Wynn, Texas Municipal League)

Against — None

On — Amanda Arriaga, Department of Public Safety; (*Registered, but did not testify*: Nicole Oria, Texas State Board of Veterinary Medical Examiners (TBVME); Marios Parpounas, Texas Facilities Commission)

BACKGROUND: Government Code, sec. 2175.182 requires state agencies to report all surplus and salvage property to the Texas Facilities Commission (TFC). The property may be offered for transfer or sold to the public.

Under sec. 2175.184, TFC has the authority to transfer the property to a state agency, political subdivision, or assistance organization at a price established by the commission, or the TFC may sell the property to the public in accordance with sec. 2175.186.

DIGEST: CSHB 229 would allow the TFC to transfer surplus motor vehicles and other law enforcement equipment of the Department of Public Safety to a municipal or county law enforcement agency if:

- the commission determined that the state's efforts to secure its international border and combat transnational crime would

sufficiently benefit from the donation; and

- the agency was in an economically disadvantaged area of Texas.

The vehicles or equipment would be transferred at a price or for other consideration that was agreed to by the commission and the recipient agency.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 229 would increase access for underserved communities to certain surplus law enforcement property to combat transnational criminal activity along the Texas-Mexico border. Underfunded law enforcement agencies in smaller counties need surplus vehicles and equipment that the Department of Public Safety (DPS) is capable of providing, and giving the Texas Facilities Commission (TFC) the option to donate this equipment at little or no cost would have a positive impact on these communities. The bill also would be sufficiently narrow to allow such priority to be given in only a few, but necessary, circumstances.

Allowing the Facilities Commission to maintain control over the surplus property under CSHB 229 would have no fiscal impact and could be implemented with existing resources. TFC already has a process in place to transfer or sell state property, and the minor revision made by CSHB 229 would streamline the process, not complicate it. Although the commission already has authority to designate the price of equipment to be sold or transferred, this bill would make it easier to determine which communities should receive priority for low-priced or free equipment. The bill also would reduce issues of discrimination and favoritism in the process.

Granting TFC clearer authority to transfer certain DPS property would be more efficient than appropriating money directly to the economically disadvantaged communities. The state budget is approved only once every two years when the Legislature convenes. Authorizing TFC to transfer property to municipalities and counties that need it would be more efficient than requesting that the state appropriate money directly to these communities to purchase equipment.

Exceptions to TFC's sale, transfer, and disposition process already have been applied to other agencies with success. For example, under Government Code, ch. 2175, subch. F, similar exceptions already apply for surplus property of the Legislature, charitable institutions, institutions of higher education, the secretary of state, and the Office of Court Administration.

OPPONENTS SAY:

CSHB 229 would be an unnecessary addition to the code because TFC already has the authority to transfer property to a state agency and to establish the price of the property.

The bill also would not be the most efficient way to deal with this problem. If the intention of the state is to ensure that economically disadvantaged communities with little funding can acquire law enforcement equipment, then the state should appropriate money directly to those communities for that purpose. TFC already can sell DPS equipment to those agencies at little or no cost. Appropriating money to those agencies to purchase equipment would have the same effect as CHSB 229 without creating extra steps for TFC and further complicating the transfer process.

SUBJECT: Changing liability, seller's remedies under property executory contracts

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Oliveira, Simmons, Collier, Fletcher, Romero, Villalba

1 nay — Rinaldi

WITNESSES: For — Robert Doggett, Texas Family Council; (*Registered, but did not testify*: Randy Lee, Stewart Title Guaranty Company)

Against — None

BACKGROUND: Under Property Code, sec. 5.061 default related to an executory contract for conveyance is the failure to make timely payment or comply with a term of the contract. Under sec. 5.066 , if the purchaser defaults after paying 40 percent or more of the amount due or the equivalent of 48 monthly payments under the executory contract, the seller can conduct a sale similar to a traditional foreclosure sale through a trustee. The purchaser's interest in the property can be sold, but the seller cannot enforce the remedy of rescission or of forfeiture and acceleration after the purchaser has paid 40 percent of the amount due or the equivalent of 48 monthly payments.

Under sec. 5.066 the seller must give the purchaser 60 days to cure the default after notice is given before the seller can sell the property. If the amount received for the property at the sale is greater than the amount of debt the purchaser still owes the seller, the seller must give the excess amount to the purchaser.

Sec. 5.076 requires a seller to record an executory contract within 30 days after it is executed. Sec. 5.079 requires a seller to transfer recorded, legal title of the property covered by an executory contract to the purchaser within 30 days of receiving the final payment due. A seller who fails to transfer the title is liable to the purchaser for liquidated damages of $250 per day for each day the seller fails to transfer the title from the 31st day until the 90th day, and $500 per day following the 90th day after final

payment. The seller also would be liable for reasonable attorney's fees.

DIGEST:

HB 311 would limit a seller's ability to enforce certain remedies under an executory contract for conveyance of real property, create liability for failing to record an executory contract, and specify the effect of a recorded executory contract related to legal title of the property.

The bill would add to the limitations on a seller's authority to exercise the remedy of rescission or of forfeiture and acceleration the condition that an executory contract had not been recorded. A seller could not enforce the remedies of rescission or of forfeiture and acceleration after the contract had been recorded.

The bill would specify that in the event the purchaser defaulted and the executory contract had been recorded, regardless of the amount the purchaser had paid, the seller could conduct a sale through a trustee to sell the purchaser's interest in the property. The requirements of the sale would be the same as under current law.

The bill would create liability for sellers who failed to record an executory contract within 30 days after the contract was executed. The liability of the seller to the purchaser would be similar to the liability for failing to transfer title that exists under current law, except the damages could not exceed the value of the property or the amount paid under the contract, whichever was greater. This would not limit or affect any other rights or remedies a purchaser had under the law.

On recording, an executory contract would convey legal title to the purchaser, subject to a lien retained by the seller for the amount of the unpaid contract price, less any lawful deductions. Extrinsic evidence could be used to supply the legal description of the property if that information was not apparent from the recorded contract.

The bill would allow a purchaser, as under current law, to convert an interest in the property under an executory contract into recorded, legal title at any time and without paying penalties or charges of any kind, but it would make this provision apply regardless of whether the seller had already recorded the executory contract. This could not be construed to

limit the purchaser's equitable interest in the property or other rights of the purchaser.

The bill would take effect September 1, 2015, and would apply only to an executory contract entered into on or after that date.

SUPPORTERS SAY:

HB 311 would protect purchasers involved in executory contracts from unfair practices. Executory contracts often are used in transactions involving purchasers who do not understand their rights under the law. The bill would protect purchasers' equity and title in their homes by providing liability if the seller did not record the contract, as required by law, and by limiting the use of rescission or forfeiture and acceleration as a remedy when the purchaser defaulted. Under both rescission and forfeiture and acceleration, purchasers lose their homes and the money they have already paid under the contract, making it more similar to a landlord-tenant relationship than a homeowner-lender relationship. The bill would protect homeowners from losing everything because of a missed payment.

HB 311 would not restrict businesses because the use of executory contracts would not be limited, only clarified. The recording requirement for executory contracts already exists, but it is not always followed. The bill would encourage sellers to record executory contracts by creating liability if the seller did not, but a business still would be able to use this kind of contract. The bill also would change the remedies used in the event of a default of an executory contract to be more like traditional remedies under a conventional mortgage, such as a foreclosure sale. This also would not restrict businesses and still would offer a remedy for a seller to take the property back in the event of a default and receive the value of the property through a foreclosure-type sale.

OPPONENTS SAY:

HB 311 would restrict businesses in their activities by discouraging the use of executory contracts and changing their effect. These contracts are an important tool to use when conveying real property because they provide a much simpler process than a conventional mortgage through a bank. Many people are not able to obtain financing through conventional mortgages, and these contracts represent an alternative for them to contract with, for example, the developer or builder of the property.

The bill would transfer title of the property to the purchaser, subject to the seller's lien, upon recording. This would be a change in executory contracts and the seller's rights because under current law, title remains with the seller until the purchaser makes the final payment under the contract. Limiting a tool that businesses use to offer opportunities to purchasers that would not otherwise exist would be unduly restrictive. The law should not favor one form of transaction over another, and by making the executory contract more like a conventional mortgage, this bill could do that.

The bill could create uncertainty for future purchasers of properties under executory contracts. It would allow information outside of the recorded contract to dictate the legal description of a property. This is problematic because people should be able to rely solely on public records and not have to worry about other information they are unaware of that could affect their property transaction. This could be harmful to future purchasers because the property covered by the contract might not be clear.

NOTES:

The author plans to introduce a floor amendment that would specify that the use of extrinsic evidence to supply the legal description of property if the recorded contract did not contain that information would not affect the rights of a creditor or a subsequent purchaser who paid valuable consideration and who did not have notice of the executory contract.

SUBJECT: Requiring political subdivisions to publish annual debt reports online

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 7 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Pickett, Stephenson

0 nays

WITNESSES: For — Jess Fields, Texas Public Policy Foundation; Peggy Venable, Americans for Prosperity; (*Registered, but did not testify:* Jeffrey Brooks, Texas Conservative Coalition)

Against — Johnny Hill, Lake Travis ISD

On — Jim Allison, County Judges and Commissioners Association of Texas; Thomas Canby, Texas Association of School Business Officials; Howard Cohen, Schwartz, Page & Harding, L.L.P.; John Dahill, Texas Conference of Urban Counties; David Edgar, Eanes ISD; James Hernandez, Harris County and Harris County Toll Road Authority; Bill Longley, Texas Municipal League

DIGEST: CSHB 1378 would require political subdivisions to publish online annual financial reports related to debt. The bill would define "political subdivision" to mean a county, municipality, school district, junior college district, or other special district or subdivision of state government.

Reporting of funds. The annual financial report would contain the following information for each fund under the political subdivision's authority:

- total itemized receipts and disbursements;
- the balance at the end of the fiscal year; and
- any other information required by law to appear in a comparable annual financial statement prepared by the political subdivision.

Reporting of debt obligations. The report also would have to contain, as

of the end of the preceding fiscal year, debt obligation information stating:

- the amount of all authorized obligations, the principal of each outstanding obligation, and the total principal of all outstanding obligations;
- for each debt obligation, the issued and unissued amount, the spent and unspent amount, the maturity date, and the purpose for which it was issued;
- the combined principal and interest needed to pay each debt and all debts on time and in full; and
- the amounts above secured by property taxes expressed as a total amount and — for a municipality, county, or school district — as a per capita amount.

A political subdivision would need to include in the report any other information it considered relevant or necessary with regard to debt obligations, including:

- for a subdivision other than a municipality, county, or school district, the amounts above secured by property taxes expressed as a per capita amount;
- the amounts above expressed as a projected per capita amount as of the last day of the maximum term of the most recent obligation issued by the political subdivision; and
- explanations of payment sources for each debt.

Website reporting requirements. The bill would require a county or municipality with more than 2,000 people, a school district, and a junior college to post the annual financial report on a website it maintained and to ensure that the report was posted continuously and available for public inspection, along with the political subdivision's contact information.

If a political subdivision in another category chose not to maintain its own website, it could post the annual financial report on a third-party website, including a social media site, on which the subdivision controlled the content posted.

CSHB 1378 would require open-enrollment charter schools to maintain websites and to post annual financial reports on those sites.

Reporting alternatives. If any of the information required by CSHB 1378 was already available online in a different report, such as its annual fiscal audit report, the local government could provide in its report to comply with the bill a direct link to the information on its website under the conditions described above.

In addition, the political subdivision could provide the information required in the annual financial report to the comptroller for publication on the comptroller's website. The political subdivision would be required to link to the financial information on the comptroller's website from its own website or from a third-party website under the conditions described above.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1378 would help to impose consistent standards for financial transparency at the local government level. It also would ensure that such information was readily available to the public.

Debt at the local level is a problem in many Texas communities, comprising some 83 percent of the state's outstanding debt. According to the Texas Bond Review Board, the total local outstanding bond debt in Texas approaches $200 billion. This bill would ensure that voters knew about the levels of debt carried by units of local government by requiring them to disclose information about these obligations and the associated per capita burden on an annual basis.

Concerns that local governments would be burdened by requirements to calculate and report the information required by the bill are outweighed by the need for financial transparency and open government. Posting information online is easy and inexpensive, even for smaller units of local government. For example, creating and maintaining a blog on WordPress takes minimal time and effort.

OPPONENTS

CSHB 1378 would be a one-size-fits-all measure that did not take into

SAY: account differences in the types of local governments. Although improved transparency is an admirable goal, the bill would excessively burden local governments by requiring them to report financial information already reported in other places in a slightly different form. Governments that have the resources to post financial reports to web are already doing so, while governments that do not already post fiscal reports do not have the resources to keep a website updated.

In addition, some of the information that CSHB 1378 would require would be difficult for some local governments to calculate. For example, a school district might not be able to easily compute its per capita debt because districts are not responsible for assessing their taxes.